REMARKS

Claims 1-39 are pending in the Application, all of which stand rejected by the Office Action mailed May 12, 2008. No claims are amended by this response. Claims 1, 17, and 32 are independent claims, while claims 2-16, 18-31, and 33-39 depend either directly or indirectly from independent claims 1, 17, and 32, respectively.

The Applicants respectfully request reconsideration of claims 1-39, in light of the following remarks.

Rejection of Claims Under 35 U.S.C. §112

Claims 1-16 stand rejected under 35 U.S.C. §112, as failing to comply with the written description requirement. In connection with that rejection, the Office Action identifies the portion of claim 1 (from which claims 2-16 depend) reciting "a database in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device." The Office Action asserts that "there is no description about 'a database of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device' in the Specification." (Office Action at p. 4). Applicants respectfully traverse that rejection. Applicants point to the following portions of the specification, for example, as providing an adequate written description supporting the at issue claim language to satisfy the written description requirement: ¶¶ 23, 69-72, and Figs. 2B and 2C. Paragraph 23, for example, reads as follows:

> In an embodiment according to the present invention, the electronic device may further comprise an update agent table resident in non-volatile memory. The update agent table may contain references to a plurality of update agents currently available and provisioned in the electronic device. The update agent table may map update agent names, update agent address locations, and types of updates that the update agents are adapted to process, and provisioning

status of the update agents for all available update agents in the electronic device.

As a further example, paragraphs 69-72 of the specification read as follows:

The update agent table 231 may maintain references to a plurality of available updates and associated update agents. When a new update agent is added, such as via an update of firmware/software in the mobile handset 107, an additional update may also be inserted into the mobile handset 107. The additional update may invoke insertion of a corresponding entry in the update agent table 231 and population thereof with associated relevant information, such as the address location of the new update agent, (i.e., where the new update agent is stored in non-volatile memory 111). An update package may be downloaded and installed in the mobile handset 107 and may result in removal of an existing update agent or replacement thereof by another.

In an embodiment according to the present invention, the update agent table 231 may comprise an array of addresses for all available update agents in the mobile handset.

Figure 2C is a block diagram 255 illustrating an update agent table 261 located in non-volatile memory 111 of an electronic device, for example, mobile handset 107, according to an embodiment of the present invention. The update agent table in the mobile handset 107 may contain references to a plurality of update agents currently available and provisioned in the mobile handset.

The update agent table 261 may maintain, for example, a mapping between update agent names, the update agent corresponding address locations in non-volatile memory, and the type of updates that the update agents are adapted to process, for all available update agents in the mobile handset 107. The update agent table 261 may also contain optional information regarding provisioning status of the update agents, such as a provisioning flag indicating whether the associated update agent has been provisioned or not.

Applicants respectfully submit that the cited portions of the Specification, for example, provide a sufficient written description to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention, including the "database" limitation, and respectfully request that the rejection of claims 1-16 under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

Claims 17-31 also stand rejected under 35 U.S.C. §112, as failing to comply with the written description requirement. In connection with that rejection, the Office Action identifies the portion of claim 17 (from which claims 18-31 depend) reciting "wherein the database for accessing the plurality of provisioned update agents in." (Office Action at p. 4). The quoted language does not appear to be present in the pending claim. Claim 17 does recite "wherein a database is used for accessing the plurality of provisioned update agents." Applicants therefore understand that to be the language relevant to the present written description rejection for claim 17. The Office Action asserts there is no description about that aspect of claim 17 in the Specification. (Office Action at p. 4). Applicants respectfully traverse that rejection. Applicants point to the following portions of the specification, for example, as providing an adequate written description supporting the at issue claim language to satisfy the written description requirement: ¶¶ 23, 69-72, and Figs. 2B and 2C (*see* discussion above with respect to claims 1-16). Applicants respectfully submit that the cited portions of the Specification, for example, provide a sufficient written description to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention, and respectfully request that the rejection of claims 17-31 under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

Further, claims 32-39 stand rejected under 35 U.S.C. §112, as failing to comply with the written description requirement. The Office Action identifies the portion of

claim 32 (from which claims 33-39 depend) reciting "wherein a database in the electronic device enables accessing of the plurality of provisioned update agents." The Office Action asserts "there is no description about 'a database in the electronic device enables accessing of the plurality of provisioned update agents' in the Specification." (Office Action at p. 5). Applicants respectfully traverse that rejection. Applicants point to the following portions of the specification, for example, as providing an adequate written description supporting the at issue claim language to satisfy the written description requirement: ¶¶ 23, 69-72, and Figs. 2B and 2C(*see* discussion above with respect to claims 1-16). Applicants respectfully submit that the cited portions of the Specification, for example, provide a sufficient written description to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention, and respectfully request that the rejection of claims 32-39 under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

Rejection of Claims Under 35 U.S.C. §103

Claims 1-4, 6, 7, 10-19, 21, 22, and 25-39 stand rejected under 35 U.S.C. §103(a) as being obvious over Lee *et al.*, U.S. Publication No. 2004/0031029 (hereinafter "Lee") in view of Meyerson, U.S. Patent No. 6,976,251 (hereinafter "Meyerson"). Claims 5, 9, 20, and 24 stand rejected under 35 U.S.C. §103(a) as being obvious over Lee in view of Meyerson, further in view of Yang *et al.*, U.S. Publication No. 2003/0065738 (hereinafter "Yang"). Claims 8 and 23 stand rejected under 35 U.S.C. §103(a) as being obvious over Lee in view of Meyerson, further in view of Kikinis, U.S. Patent No. 5,708,776 (hereinafter "Kikinis"). For at least the reasons discussed below, Applicants respectfully traverse those rejections, and further respectfully submit that the Office Action does not provide a *prima facie* case of obviousness for those claims.

Allowability of Claim 1 and Claims 2-16 That Depend from Claim 1

Claim 1 recites an electronic device network comprising, *inter alia*, a plurality of electronic devices, wherein the update agent employed is selected to correspond to a type of update information received by the electronic device from the at least one of the plurality of servers, the electronic device network of claim 1 also comprising, *inter alia*, a database in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device. Applicants respectfully submit that the Office Action does not provide a *prima facie* case of obviousness, at least because the cited prior art combinations do not teach, suggest, or otherwise render obvious at least two aspects recited by claim 1: "wherein the update agent employed is selected to correspond to a type of update information received by the electronic device from the at least one of the plurality of servers"; and "a database in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device."

> "wherein the update agent employed is selected to correspond to a type of update information received by the electronic device from the at least one of the plurality of servers"

Applicants appreciate the Office Action's recognition that Lee "does not mention 'update agent is selected to correspond to a type of update information.'" (*See* Office Action at p. 6). However, Applicants respectfully traverse the Office Action's assertion that Meyerson teaches that aspect of claim 1. The Office Action cites Meyerson at 4:38-50 and 4:10-16. Meyerson at 4:10-16 reads as follows:

> Once flow has started, it proceeds to block 12 where the intelligent update agent sends a software update query comprising a request for software update information. The software update query is sent over a computer network, such as the Internet. In one implementation of the invention, the intelligent update agent is designed specifically for and may be incorporated into particular software.

(emphasis added). As discussed in previous responses, Applicants respectfully submit that this portion of Meyerson does not disclose the presently claimed subject matter. For example, the cited portion of Meyerson does not teach, suggest, or otherwise render obvious, "wherein the update agent employed **is selected** to correspond to a type of update information received by the electronic device from the at least one of the plurality of servers." The cited portion of Meyerson does not teach selection of an update agent. For example, Meyerson states, "In one implementation of the invention, the intelligent update agent is designed specifically for and may be incorporated into particular software." To the extent such an agent may be argued to "correspond to" specific software, such an agent would not be "selected to correspond to a type of update information received," particularly where it is incorporated as part of the software. Moreover, such an incorporated agent would teach against the use of a database for accessing the plurality of provisioned update agents, as a database for accessing such an agent would appear to be pointless, particularly where the agent is incorporated into particular software. Further still, such an update agent would not disclose "...correspond to a type of update information received by the electronic device..." as it is merely "designed specifically for and may be incorporated into particular software."

In any event, Meyerson teaches that its update agent "sends a software update query comprising a request for software update information." This is quite different from the presently claimed subject matter wherein the update is "selected to correspond to a type of update information received by the electronic device from the at least one of the plurality of servers." Put another way, the update agent of Meyerson requests update information. In contrast, the presently claimed update agent is selected to correspond to a type of update information received by the electronic device from a server. The update agent of Meyerson could not be "selected" to "correspond to a type of update information received" because it is the update agent of Meyerson that sends the request for update information in the first place: "...the intelligent update agent sends a software update query comprising a request for software update information." The Office Action provides no explanation of

how the update agent of Myerson could be selected to correspond to something that the update agent of Myerson itself has requested. Because the update agent of Myerson makes the request, it must necessarily pre-exist the information that it requests, and cannot therefore be seen as later "selected" to correspond to such information once that information is received. Again, such a teaching of an update agent that requests software update information would teach against a network as claimed in claim 1, where the update agent is selected to correspond to a type of update information received by the electronic device.

The additional cited portion of Meyerson, 4:38-50, reads as follows:

> After the software update query is sent, the software update information is downloaded in block 14. In the simplest case, where the update agent corresponds to a single software program, the software update information may simply be a "yes" or "no" telling the agent whether a software update is available and whether a criticality check program is available. In the more general case, however, the software update information will include substantial additional information for multiple software programs. In the preferred implementation of the invention, the software update information will include a field telling the update agent whether a criticality check program is available for each software update.

Applicant also respectfully submits that this portion of Meyerson does not remedy the deficiencies in the previously cited portion, and does not disclose the presently claimed subject matter. That "[i]n the simplest case...the update agent corresponds to a single software program" in Meyerson does not disclose the presently claimed subject matter. As discussed above, even if the update agent of Meyerson, *arguendo*, "corresponds" to a "single software program," the update agent of Meyerson is still not selected to correspond to a type of update information -- indeed, as discussed above, the update agent of Meyerson cannot be "selected" to correspond to a type of update information received by the electronic device, as it is the update agent of Meyerson that "sends a software update query comprising a request for software update information" in the first place.

From above, in Meyerson, it is the update agent itself that "sends a software update query comprising a request for software update information," in contrast to the presently claimed subject matter, wherein the update agent employed is selected to correspond to a type of update information received by the electronic device. Applicants respectfully submit that Meyerson, either alone or in combination with Lee, cannot teach, suggest, or otherwise render obvious the selection of an update agent to correspond to a type of update information received by the electronic device, because the update agent of Meyerson sends the request for update information in the first place. Such an update agent, that sent the request in the first place, cannot later be "selected" based on information received in response to its own request. In fact, such a disclosure teaches against the presently claimed subject matter. And, in any event, if the "corresponding update agent" of Meyerson were combined with Lee, the asserted combination would still not teach, suggest, or otherwise render obvious the presently claimed subject matter, as such a combination would not disclose at least "wherein the update agent employed is selected to correspond to a type of update information received by the electronic device from the at least one of the plurality of servers." As such, Applicants respectfully submit that claim 1, and all of its dependent claims, are therefore allowable over the combination of Lee and Meyerson. Applicants further respectfully submit that these claims are additionally allowable over Lee and Meyerson as discussed immediately below with regard to the presently claimed subject matter's "database" limitation.

> "a database in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device"

The Office Action asserts that this aspect of the presently claimed subject matter is inherent in Lee. "In fact, a database must exist in Lee's teaching since Lee's teaching mentioned 'updating a plurality of software components', therefore it's assumed and inherent a database exists in the device to store the software components that is about to be updated." (Office Action at p. 7.) Applicants respectfully traverse that assertion and the rejection based on inherency.

That a certain result or characteristic may be present in the prior art is not sufficient to establish inherency. *See* MPEP §2112. To establish inherency, it must be clear that the missing descriptive matter is necessarily present in the reference, and that it would be recognized as so by persons of ordinary skill in the art. *Id.* Inherency may not be established by probabilities or possibilities -- that a certain thing may result is not sufficient to establish inherency. *Id.* To rely upon a theory of inherency, an Office Action must provide a basis in fact and/or technical reasoning to reasonably support that the alleged inherent characteristic necessarily flows from the cited art. *Id.*

Applicant respectfully submits that the Office Action does not provide the required basis in fact and/or technical reasoning to reasonably support that the "database" limitation necessarily flows from the cited teachings of Lee. For example, the Office Action simply states that "a database must exist in Lee's teaching since Lee's teaching mentioned 'updating a plurality of software components', therefore it's assumed and inherent a database exists in the device to store the software components that is about to be updated." (See Office Action at p. 7). Applicant respectfully submits that inherency cannot be satisfied by "assuming" a limitation is present in the prior art. Applicants further respectfully submit that the Office Action assertion that Lee teaches a plurality of software components does not provide the required basis in fact and/or technical reasoning, and that the Office Action has not satisfied its burden to establish inherency.

In any event, Applicants further respectfully submit that the alleged teaching of Lee of a plurality of software components does not render the "database" limitation of claim 1 inherent, as such a database as claimed is not necessarily present in the asserted teaching of a plurality of software components. As an example (assuming, *arguendo*, that Lee teaches a plurality of software components) one member of a plurality of software components could be accessed by an index built into executable code. The code, when executed, could go through a series of "if" statements to locate a particular software component. Applicants respectfully submit that because "a

database in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device," as required by claim 1, does not necessarily exist in Lee's teaching, that such a teaching is not inherent in Lee.

This is further the case with regard to, for example, claim 15. Claim 15 recites the network according to claim 1, "wherein the database for accessing the plurality of provisioned update agents in the electronic device comprises an update agent table resident in non-volatile memory, the update agent table containing references to a plurality of update agents currently available and provisioned in the electronic device, the update agent table associating update agent names, update agent address locations, types of updates that the update agents are adapted to process, and provisioning status of the update agents for all available update agents in the electronic device." The Office Action states, "For the 'database' feature see claim 1 rejection." (Office Action at p. 11). Applicants respectfully submit that such a database, comprising an update agent table association update agent names, update agent address locations, types of updates that the update agents are adapted to process, and provisioning status of the update agents for all available update agents in the electronic device, is not inherent in the teaching of Lee.

From the above, Applicants respectfully submit that Lee does not teach, suggest, or otherwise render obvious "a database in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device." Applicants further submit that Meyerson does not remedy this deficiency in the teachings of Lee. (In fact, as discussed above, Applicants respectfully submit Meyerson would teach against the presently claimed subject matter).

Applicants therefore respectfully submit that Lee and Meyerson, either alone or in combination, do not teach, suggest, or otherwise render obvious either "wherein the update agent employed is selected to correspond to a type of update information

received by the electronic device from the at least one of the plurality of servers" or "a database in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device." Each of these shortcomings in the teachings of the cited prior art provide an independent reason for the allowability of independent claim 1, as well as claims 2-16 that depend from claim 1. As such, Applicants respectfully request the withdrawal of the rejection of those claims under 35 U.S.C. §103.

Allowability of Claim 17 and Claims 18-31 That Depend from Claim 17

Independent claim 17 recites a method employing a plurality of update agents in an electronic device in an electronic device network comprising, *inter alia*, selecting at least one of a plurality of update agents resident in the electronic device to modify a first version of one of software and firmware in the electronic device to produce an update version, wherein each of the plurality of update agents is arranged to process a corresponding type of update information received from the at least one of a plurality of servers, and provisioning the plurality of update agents with parameters and data used to facilitate update operations in the electronic device, wherein a database is used for accessing the plurality of provisioned update agents. In rejecting claim 17, the Office Action generally relies on the same grounds used to reject claim 1. (*See* Office Action at p. 11). For at least the reasons discussed above with respect to claim 1, Applicants respectfully submit that Lee and Meyerson, either alone or in combination, do not teach, suggest, or otherwise render obvious, for example, selecting at least one of a plurality of update agents, wherein each of the plurality of update agents is arranged to process a corresponding type of update information received from the at least one of a plurality of servers, and provisioning the plurality of update agents with parameters and data, wherein a database is used for accessing the plurality of provisioned update agents. As such, Applicants respectfully request the withdrawal of the rejection of claim 17, as well as claims 18-31 that depend from claim 17, under 35 U.S.C. §103.

Allowability of Claim 32 and Claims 33-39 That Depend from Claim 32

Independent claim 32 recites an electronic device operable in an electronic device network comprising, *inter alia*, code resident in an executable by the electronic device comprising a plurality of provisioned update agents selectable to cause processing of a corresponding type of received update information, wherein a database in the electronic device enables accessing of the plurality of provisioned update agents, and wherein a provisioned update agent is selected to perform an update based upon the type of the received update information. In rejecting claim 32, the Office Action generally relies on the same grounds used to reject claim 1. (*See* Office Action at p. 15). For at least the reasons discussed above with respect to claim 1, Applicants respectfully submit that Lee and Meyerson, either alone or in combination, do not teach, suggest, or otherwise render obvious, for example, code executable to cause processing of a corresponding type of received update information, wherein a database in the electronic device enables accessing of the plurality of provisioned update agents, and wherein a provisioned update agent is selected to perform an update based upon the type of the received update information. As such, Applicants respectfully request the withdrawal of the rejection of claim 32, as well as claims 33-39 that depend from claim 32, under 35 U.S.C. §103.

Conclusion

In general, the Office Action makes various statements regarding claims 1-39 and the cited references that are now moot in light of the above. Thus, Applicants will not address such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

The Applicants believe that all of claims 1-39 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, the Applicants invite the Examiner to contact the undersigned at (312) 775-8000 for an interview.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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